



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



Brian Adair and Marlene Adair
P.O. Box 26
Danbury, NH 03230

Re: Adair's Motor Inn Water System
EPA #0578020

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-007**

February 22, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Brian Adair and Marlene Adair, pursuant to RSA 485:58 and Env-C 601.05. The Division is proposing that fines totaling \$3,500 be imposed against Brian Adair and Marlene Adair for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Brian Adair and Marlene Adair are individuals having a mailing address of P.O. Box 26, Danbury, NH.

III. Summary of Facts and Law Supporting Claims

1. RSA 485 authorizes DES to regulate public water supplies. RSA 485:3 authorizes the Commissioner to adopt drinking water rules which identify contaminants which may have an adverse affect on health, establish maximum contaminant levels (MCLs) that are acceptable in water for human consumption, establish criteria for procedures to assure compliance with MCLs, and identify criteria and standards to ensure the proper operation and maintenance of water systems. Pursuant to this authority, the Commissioner has adopted has NH Admin. Rules Env-Ws 300.
2. RSA 485:58, IV authorizes the Commissioner of the Department of Environmental Services ("DES") to impose administrative fines of up to \$2,000 per offense for violations of RSA 485 or any rule adopted pursuant thereto, and to establish a schedule of fines for such violations. Pursuant to this authority, the Commissioner has adopted Env-C 602 to establish the schedule of fines for violations of RSA 485 and rules adopted pursuant thereto.
3. Brian Adair and Marlene Adair are the owners of a water system that serves a motel and restaurant which serves an estimated population of 50, located on Route 104 in the community of Danbury, NH ("Water System"). The Water System is a transient, non-community water system as defined in NH RSA 485:1-a, X and NH Admin. Rule Env-Ws 302.02 (bt).

Bacteria Monitoring

4. NH Admin. Rule Env-Ws 315.01 requires all transient, non-community water systems to monitor for bacteria in accordance with a schedule based on the population served by the system.
5. NH Admin. Rule Env-Ws 325.02 requires transient, non-community water systems serving less than 1,000 people to submit a minimum of one sample every six months to test for the presence of total coliform bacteria, and one sample quarterly following the presence of total coliform bacteria in the water sample.
6. Due to the presence of total coliform bacteria in its November 1996 water sample, the Water System is required to routinely collect one water sample every quarter during the scheduled sampling months of February, May, August, and November.
7. On or about February 4, 1997, a Letter of Deficiency ("February 1997 LOD") was issued to the Water System for failing to monitor/report for bacteria in May 1996 and December 1996. The Water System received the February 1997 LOD on or about February 7, 1997, as evidenced by the signed postal receipt.
8. On or about February 10, 1997, the Water System submitted a water sample to the state laboratory for bacterial analysis as requested in the February 1997 LOD, but failed to verify to DES the name of the sampling agent and the laboratory used.
9. DES issued Administrative Order WD 97-37 (the "Order") to the Water System on July 28, 1997, for the Water System's failure to correct significant deficiencies identified in the July 17, 1996 sanitary survey report and for the past failure to submit water samples for total coliform analysis. The Water System received the Order on or about July 30, 1997, as evidenced by the signed postal receipt.
10. The Water System corrected the violations identified in the Order and DES released the Order on December 11, 1998.
11. The Water System submitted all routine bacteria samples for the assigned months of February 1999, May 1999, August 1999, November 1999, and November 2000.
12. The Water System failed to submit samples for bacterial analysis to a state laboratory or a state-certified laboratory during the system's scheduled months of February 2000, May 2000, and August 2000.
13. NH Admin. Rule Env-C 602.03 establishes administrative fines for violations of monitoring, reporting, and compliance requirements. For failure to submit required water samples or sample data for bacterial analysis as required by Env-Ws 325.01 through Env-Ws 325.15, a fine of \$100 per sample for the first violation within each federal fiscal year and \$200 per sample for each subsequent violation within that federal fiscal year is authorized.
14. NH Admin. Rule Env-C 602.01(b) defines "federal fiscal year", for purposes of water supply issues, as the time interval from October 1 through the following September 30.

Public Notification

15. NH Admin. Rule Env-Ws 351.01 requires a water system that fails to submit any of the routine bacteria samples as required by Env-Ws 325 to notify persons served by the system within 21 days of the failure to sample. Within 30 days of the failure to sample, the water system must provide proof of public notice to the Division.

16. The Division issued the Water System a Notice of Bacteria Major Monitoring and Reporting Violation ("Notice of Violation") dated March 29, 2000, for failure to monitor for bacteria in the February 2000 sampling month. The letter requested that the Water System post public notice stating that the February 2000 sampling had not been performed and submit proof of public notice to the Division. Enclosed with the Notice of Violation was the public notice language to be used and instructions for posting public notice.

17. The Water System failed to submit proof of public notice to the Division

18. The Division issued the Water System a Notice of Bacteria Major Monitoring and Reporting Violation ("Notice of Violation") dated June 28, 2000, for failure to monitor for bacteria in the May 2000 sampling month. The letter requested that the Water System post public notice stating that the May 2000 sampling had not been performed and submit proof of public notice to the Division. Enclosed with the Notice of Violation was the public notice language to be used and instructions for posting public notice.

19. The Water System failed to submit proof of public notice to the Division

20. The Division issued the Water System a Notice of Bacteria Major Monitoring and Reporting Violation ("Notice of Violation") dated September 25, 2000, for failure to monitor for bacteria in the August 2000 sampling month. The letter requested that the Water System post public notice stating that the August 2000 sampling had not been performed and submit proof of public notice to the Division. Enclosed with the Notice of Violation was the public notice language to be used and instructions for posting public notice.

21. The Water System failed to submit proof of public notice to the Division

22. NH Admin. Rule Env-C 602.04 establishes fines for violations relating to public notification. For failure to provide public notice as required by Env-Ws 350 through Env-Ws 359, a fine of \$1,000 per major monitoring/reporting violation as defined in Env-Ws 351 is authorized.

IV. Violations Alleged

1. Brian Adair and Marlene Adair have violated NH Admin. Rule Env-Ws 325.02 by failing to submit water samples for total coliform analysis in the system's scheduled month of February 2000 (federal fiscal year 1999-2000).

2. Brian Adair and Marlene Adair have violated NH Admin. Rule Env-Ws 325.02 by failing to submit water samples for total coliform analysis in the system's scheduled month of May 2000 (federal fiscal year 1999-2000).

3. Brian Adair and Marlene Adair have violated NH Admin. Rule Env-Ws 325.02 by failing to submit water samples for total coliform analysis in the system's scheduled month of August 2000 (federal fiscal year 1999-2000).
4. Brian Adair and Marlene Adair have violated NH Admin. Rule 351.01 by failing to provide proof of public notice to the Division within 30 days of the failure to sample for total coliform bacteria in February 2000.
5. Brian Adair and Marlene Adair have violated NH Admin. Rule 351.01 by failing to provide proof of public notice to the Division within 30 days of the failure to sample for total coliform bacteria in May 2000.
6. Brian Adair and Marlene Adair have violated NH Admin. Rule 351.01 by failing to provide proof of public notice to the Division within 30 days of the failure to sample for total coliform bacteria in August 2000.

V. Proposed Administrative Fines

1. For the violation identified in Section IV. 1. above, pursuant to Env-C 602.03(a), the Division is seeking a fine of \$100.
2. For the violation identified in Section IV. 2. above, pursuant to Env-C 602.03(a), the Division is seeking a fine of \$200.
3. For the violation identified in Section IV. 3. above, pursuant to Env-C 602.03(a), the Division is seeking a fine of \$200.
4. For the violation identified in Section IV. 5. above, pursuant to Env-C 602.04(b), the Division is seeking a fine of \$1,000.
5. For the violation identified in Section IV. 6., above, pursuant to Env-C 602.04(b), the Division is seeking a fine of \$1,000.
6. For the violation identified in Section IV. 7., above, pursuant to Env-C 602.04(b), the Division is seeking a fine of \$1,000.

The total fine being sought is \$3,500.

VI. Hearing, Required Response

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, April 30, 2001 at 1:00 p.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than April 20, 2001 , using the enclosed form as follows:

If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.

2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If you wish to have a hearing but are unable to attend as scheduled, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violation(s) and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

- 1 The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
- 3 You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
- 4 Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

for  **COPY**
Harry C. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2 1999)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Town of Danbury Board of Selectmen
Health Officer, Town of Danbury
USEPA, Region 1